



UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE

NINTH CIRCUIT.

OCTOBER TERM, 1891.

THE UNITED STATES OF AMER-ICA.

Appellee.

vs.

THE STEAM TUG "PILOT," Her Steamers, Engines, Boilers, Machinery, Tackle, Apparel, Furniture, Etc.,

Respondent.

JOAN OLIVE DUNSMUIR,

Appellant.

: : RECORD. : :

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

THE UNITED STATES OF AMERICA, Libellant.

VS.

THE STEAM TUG PIOT, Her Steamers, Engines, Boilers, Machinery, Tackle, Appparel, Furniture, Etc.,

To Honorable C. H. Hanford, Judge of the District Court of the United States, in and for the District of Washington, Northern Division.

Comes now the United States Attorney for the District of Washington, and for and in behalf of the United States of America and all persons concerned and files this libel of information against the said steam tug Pilot, her steamers, engines, boilers, machinery, tackle, apparel, furniture, etc., etc., and informs the Court as follows:

That on the 5th day of May, 1891, within the Customs District of Puget Sound, and upon the waters of Puget Sound, and within the Northern Division of said District of Washington, the Honorable C. M. Bradshaw, the duly qualified and acting Collector of Customs for the District of Puget Sound did sieze and now hath in his possession as being forfeited to the United States for violation of Section 4370 of the Revised Statutes of the United States, that certain tug Pilot, her engines, boilers, steamers, machinery, tackle, apparel and furniture, etc., etc.

That the said steam tug boat was not at said date and at

no time a tug boat of the United States, but was a tug boat owned by foreigners at Victoria, British Columbia.

That on the 3rd day of May, 1891, the said steam tug boat Pilot, being then and there a British steam tug boat from Victoria, British Columbia, towed an American bark, Valley Forge, of 1286 tons burden, on her way from San Francisco, California, to Port Angeles, Washington, the said bark Valley Forge being then and there a documented vessel of the United States plying from one port of place in the same to another.

That upon the seizure of the said tug Pilot by said Collector of Customs as aforesaid a fine or penalty of fifty dollars per ton of the tonnage of the bark Valley Forge, amounting to six hundred and forty-three dollars, was assessed against the said steam tug Pilot, her steamers, engines, boilers, machinery, tackle, apparel, furniture, etc., etc. which penalty has not been paid to libelant, and for these reasons the said tug Pilot was seized by the Collector of Customs as aforesaid, and is still in his possession at Port Angeles, State of Washington.

That all and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States, and of this Honorable Court; and for which the United States Attorney prays process of this Honorable Court in the premises and for a monition that the steam tug Pilot may be decreed to be forfeited to the United States of America.

> P. H. WINSTON, United States Attorney.

By P. C. SULLIVAN. Asst. U. S. Atty. Interrogatories to be answered by any claimant of the tug boat Pilot; mentioned in the annexed libel.

1. Who are the owners of the tug boat Pilot, and who were the owners on May 5, 1891, and for thirty days prior thereto?

2. Who was the master of said tug boat?

3. At what foreign port or place is said tug boat registered and at what foreign port or place does she belong?

4. At what place did the said tug boat Pilot first commence towing the said bark Valley Forge?

And on the back of the foregoing is endorsed the words and figures following :

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

UNITED STAT	res,	Ì	
The Steam Steamers, Etc.	vs. Tug Pilot, Her Engines, Boilers,	259.	Libel.

Filed May 12, 1891, in the U.S. District Court.

R. M. HOPKINS, *Clerk*,

DISTRICT OF WASHINGTON, ss.

[SEAL]

The President of the United States of America to the Marshal of the United States for the Northern Division, District of Washington, greeting:

> Whereas, a libel of Information hath been filed in the District Court of the United States for the Northern Division, District of Washington, on the 12th day of May, in the year of our Lord one thousand eight hundred

and ninety-one by the United States Attorney for the District of Washington, against

The steam tug "Pilot" her boilers, machinery, tackle, apparel, furniture etc., for the reasons and causes in the said libel of information mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steam tug Pilot, etc., may be cited in general and special to answer the premises and all proceedings be had that the said steam tug Pilot etc, may for the causes in the said libel of information mentioned, be condemned and sold to pay the demands of the United States of America.

You are therefore hereby commanded to attach the said steam tug "Pilot" etc, and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel of information, that they be and appear before the said Court, to be held in and for the Northern Division, District of Washington, on the 6th day of August, 1891, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations on that behalf. And what you have done in the premises do you then and there make return thereof, together with this writ.

Witness the Hon. C. H. Hanford, Judge of said Court, at the City of Seattle, in the Northern Division, District of Washington, this 21st day of July in the year of our Lord one thousand eight hundred and ninety-one and of our independence the one hundred and sixteenth.

> R. M. HOPKINS, *Clerk.* P. H. WINSTON,

> > U. S. Attorney.

And on the back of the foregoing is endorsed the words and figures following:

In obedience to the within monition, I attached the steam tug Pilot therein described on the 22nd day of July, 1891, and have given due notice to all persons claiming the same that this Court will on the 6th day of August, 1891, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same. Fees \$14.90.

> THOS. R. BROWN, U. S. Marshal. By W. A. PRINCE, Deputy Marshal.

Dated July 24th, 1891.

DISTRICT COURT OF THE UNITED STATES, DISTRICT OF WASH-INGTON.

UNITED STATES

vs.

THE STEAM TUG PILOT, ETC.

Monition returnable Aug. 6, 1891.

P. H. WINSTON, U. S. Attorney.

Issued July 21, 1891. Filed July 25, 1891,

> R. M. HOPKINS, *Clerk*.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

UNITED STATES OF AMERICA,			
Libelant,	In Admiralty.		
vs. The Seatm Tug "Pilot" her steam engines, boilers, ma- chinery, tackle, apparel, fur- niture, etc., <i>Respondent.</i>	Plea, civil and maritime upon fine or penalty for violation of Section 4370 of the United States re- vised statutes.		

And now Joan Olive Dunsmuir intervening for her interest, appears before the above entitled Court and makes claim to the said steam tug "Pilot," her steam engines, boilers, tackle, apparel and furniture as the same are attached by the Marshal under process of this Court at the instance of the United States of America, libelant; and the said Joan Olive Dunsmuir avers that she was in possession of the said steam tug Pilot, both at the time of the seizure of said steam tug by the Collector of Customs at Port Angeles and at the time of the attachment thereof by the Marshal, and that Joan Olive Dunsmuir, above named, is the true and *bona fide* owner of the said steam tug "Pilot," and that no other person or persons is or are the owners thereof, and that —— Lawrence is the master of the said steam tug Pilot.

Wherefore she prays to be admitted to defend accordingly.

JOAN OLIVE DUNSMUIR,

By THOMAS BURKE,

Proctor in Admiralty.

Sworn and subscribed to on this 14th day of May, 1891, be-

[SEAL]

JOSEPH M. GLASGOW,

fore me,

Notary Public in and for the State

of Washington, residing at Seattle.

And on the back of the foregoing is endorsed the words and figures following:

DISTRICT COURT OF THE UNITED STATES, DISTICT OF WASH-INGTON, NORTHERN DIVISION.

UNITED STATES OF AMERICA,

vs.

> No. 259. Claimant's Plea.

Steam Tug "Pilot."

Filed this 14th day of May, 1891.

R. M. HOPKINS, *Clerk*.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

IN ADMIRALTY.

THE UNITED STATES OF AMERICA, Libelant,

vs.

STEAM TUG PILOT, Her Steam Engines, Boilers, Machinery, Etc., Amended Answer.

Respondent

And JOAN OLIVE DUNSMUIR,

Claimant.

To the Honorable Cornelius H. Hanford, Judge of the District Court of the United States, in and for the District of Washington, Northern Division.

The amended answer of Joan Olive Dunsmuir, claimant and owner of the steam tug "Pilot," her steam engines, boilers, etc., to the libel of the United States of America for alleged violation of Section 4370 of the Revised Statutes of the United States, showeth :

1. That the allegations of the libel that the certain steam tug "Pilot," violated Section 4370 of the Revised Statutes of the United States in towing a certain alleged American bark named "Valley Forge" into the port of Port Angeles on the 3rd day of May, 1891, is not true, the facts being as follows:

That on or about six P. M. on the 2nd day of May, 1891, the said tug boat "Pilot," spoke the said alleged American

Bark Valley Forge about three miles off Port San Juan on the Island of Vancouver, in the Province of British Columbia, the said Valley Forge being bound to Departure Bay upon the coast of the Island of Vancouver, in British Columbia, and the captain of said Valley Forge wishing to be towed to departure Bay in said British Columbia by way of Port Angeles, and from Departure Bay back through the straits of San Juan de Fuca; that the captain of the said tug boat Pilot agreed upon the 2nd day of May, 1891, with the captain of the said Bark Valley Forge to tow the said Valley Forge from the said point about three miles off Port San Juan, off the coast of said Vancouver Island in said British Columbia, to Departure Bay by way of Port Angeles, and from Departure Bay back through the Straits of San Juan de Fuca to the Pacific Ocean. That under and in accordance with said agreement to tow the said bark Valley Forge from said point of meeting three miles off the said Port San Juan, the captain of the said tug boat Pilot did on the 2nd day of May, 1891, and on the subsequent day tow the said bark Valley Forge into the port of Port Angeles. That the said towing from the said point three miles off the said Port San Juan to the said port of Port Angeles was in part within and upon foreign waters, the said Port San Juan being as aforesaid situated upon the south shore of Vancouver Island in the Province of British Columbia. That after having towed the said bark Valley Forge to Port Angeles as aforesaid the captain of the said Valley Forge was unable to continue immediately to Departure Bay, and that the tug boat Pilot thereupon cleared from the port of Port Angeles on or about the 3rd day of May, 1891, and that subsequently on or about the 5th day of May, the said tug boat Pilot returned to said Port Angeles for the purpose of completing the towing in accordance with the contract made with the captain of the bark Valley Forge. That

upon the return of said tug boat Pilot to the said port of Port Angeles on or about the 5th day of May, said tug boat Pilot was seized by the collector of the port at Port Angeles which seizure is the seizure alleged in the libel of the libelant, and which acts as aforesaid are the acts referred to and complained of in the said libel as being in violation of Section 4370 of the Revised Statutes of the United States.

2. And for answer to the interrogatories propounded by the libelant herein, the claimant says, in answer to the first of said interrogatories that the owner of the said tug boat Pilot and the owner on May, 5, 1891, and for thirty days prior thereto was Joan Olive Dunsmuir of Victoria, British Columbia, Dominion of Canada; in answer to the second interrogatory claimant says the master of said tug boat Pilot was and now is Thomas Lawrence of Victoria, British Columbia, in answer to the third interrogatory, said tug boat Pilot is registered at Victoria, British Columbia, and belongs to the port of Victoria, British Columbia; for answer to the fourth interrogatory, the claimant herein says that the said tug boat Pilot first commenced towing the said bark Valley Forge at a place about three miles distant from Port San Juan upon Vancouver Island in the Province of British Columbia, Dominion of Canada.

3. That all and singular the premises are true.

Wherefore the claimant herein prays that the Court will be pleased to pronounce against the libel aforesaid and otherwise right and justice to administer in the premises.

> BURKE, SHEPARD & WOODS, Proctors in Admiralty for the Claimant.

STATE OF WASHINGTON SS.

Andrew Woods, being duly sworn, says that he is one of the proctors for the claimant herein; that he has read the,

foregoing amended answer and knows the contents thereof and believes the same to be true; that he makes this affidavit because the claimant and owner, Joan Olive Dunsmuir, of the said steam-tug pilot is not within the District of Washington but is a foreigner now residing at Victoria, British Columbia.

ANDREW WOODS.

Subscribed and sworn to before me, this 25th day of September, 1891.

> R. M. HOPKINS, Clerk.

And on the back of the foregoing is endorsed the words and figures following:

U. S. DISTRICT COURT.

UNITED STATES

STEAM TUG PILOT. No. 259. Amended Answer.

BURKE, SHEPARD & WOODS, Proctors for Claimants.

Filed this 25th day of Sept., 1891.

R. M. HOPKINS, Clerk.

UNITED STATES OF AMERICA.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

THE UNITED STATES

Libelant,

vs.

THE STEAM TUG PILOT, Her Steamers, Engines, Boilers, Etc.,

Claimant.

Trial before Hon. C. H. Hanford, September 25, 1891.

United States District Attorney Patrick H. Winston, for the libelant and Messrs. Burke, Shepard & Woods, for claimant.

Statement of the case by the United States District Attorney, Patrick H. Winston.

Mr. Bradshaw, a witness produced on the part of the libelant having been first duly sworn, testified as follows.

Question. Mr. Winston: Mr. Bradshaw, you are the 'duly qualified and acting Collector of Customs for the District of Puget Sound, are you not?

Answer. I am.

Q. State whether you seized the tug Pilot or caused her to be seized.

A. I caused her to be seized at Port Angeles on the 5th day of May.

Q. On the 5th of May?

A. Yes sir; last.

- Q. 1891?
- A. Yes sir,

Q. What was she engaged in doing at that time that caused this seizure?

A. She was accused of towing a vessel, the American vessel Valley Forge, on her way from San Francisco to Puget Sound, and of towing her into Port Angeles from the sea.

Q. Was that American vessel a documented vessel?

A. She is.

Q. What kind of a documented vessel is she.

A. She is

Q. I mean by that to ask you if—Was she required to clear when she sails from the port of San Francisco?

A. I think she was under enrollment and license at the time.

Q. She is under enrollment and license in your district?

A. No sir.

Q. Your impression is that she is under enrollment and license in the collection district of San Francisco?

A. Yes sir. She has been documented in this district but she changed her home port and owners to San Francisco. Of course her owners residing there she is compelled to do so.

Q. She was a documented vessel and under enrollment at that time?

A. Yes sir at that time.

Q. At what time do you speak of?

A. In May last.

Q. Now a vessel documented under enrollment and license is not required to clear?

A. No sir, not if passing from one district to another; if she goes foreign she has to change her papers and turn in and register.

Q. Had she done so?

A. I think she was under an enrollment and license at the time.

Q. She was towed into Port Angeles by this steam tug.

A. It was so reported to me by an official report.

Q. What was the burden of the American bark Valley Forge?

A. I think something over 1200 tons.

Mr. Winston: I believe that is not denied, Mr. Wood?

Mr. Wood: No sir; we do not deny that.

Q. Mr. Winston: The tug Pilot is owned by foreigners at Victoria, as I understand it?

A. She is a British vessel.!

Q. Do you know where the Valley Forge, where she cleared from this time,—where she came from?

A. I do not know, except what I have been told, that she was from San Francisco.

Q. You don't know when she left San Francisco?

A. No sir, she runs clear of custom houses, being under enrollment and license.

Mr. Winston: That is all.

CROSS EXAMINATION.

Q. Mr. Wood: How do you know, Mr. Bradshaw, that this Valley Forge was a documented American vessel?

A. I know she was documented in the Port Townsend [•] Custom House.

Q. At what time was that?

A. I do not now remember. She changed her papers not long ago.

Q. How long ago?

A. I couldn't state that, but it is not more than a year ago.

Q. Was it a year ago?

A. Well, I could not say just how long ago.

Q. Do you know of your own knowledge whether or not, at the time of this towing, she was an American documented vessel?

.

A. I did not see her documents.

Q. Do you know whether she cleared from San Francisco or not, of your own knowledge?

A. I don't know as anybody knows that.

Q. Do you know her destination?

A. I know she did come to Puget Sound.

Q. Where did she go from here?

A. She went to Port Madison, I think.

Q. You do not know where the boat went after she left Port Angeles?

A. She came up the Sound.

Q. You are sure of that?

A. I am sure of that, yes sir; I am quite sure of that although I do not think I saw her, but that is my recollection of the circumstances.

Q. Is not all of this testimony that you have given here, Mr. Bradshaw, mere heresay?

A. It is what I have gathered from official reports. I have not stated that I saw the vessel at all.

Q. And you do not know the point at which she was first met by this tug "Pilot?"

A. No I do not.

Q. You know nothing about the towing—whether the towing actually occurred?

A. No sir.

Q. All of your information has been derived from reports? Made to you by others?

A. Yes; reports of an official character, and some of it from the attorneys of the "Pilot."

Q. You do not even know where the Valley Forge came from, of your own knowledge?

A. She came from San Francisco; I did not see her leave there.

Q. When was the date, according to your reports, of the seizure of the tug Pilot.

A. Well, I don't remember the date of the seizure. I think the date of the report of the towing in was on the 5th of May; that is my recollection.

Q. You think that the date of towing was on the 5th of May?

A. On the 3rd of May; I am not sure about the date; I may have gotten that confused with the date of the fining of the vessel.

Q. Do you know whether or not the seizure of the tug Pilot was made immediately upon her arrival?

A. No I think not; I think she came in subsequently, but I would not be certain. I could have refreshed my recollection by the records had I known that I was going to testify.

Q. You know nothing about the papers that the "Valley Forge" had?

A. No sir.

Q. Whether she cleared for an American or foreign port?

A. No sir:

Mr. Winston: We will excuse Mr. Bradshaw with the understanding that he may by recalled?

The Libelant rests.

Thomas Lawrence, a witness called on the part of the claimant having been first duly sworn testified as follows

Q. (Mr. Wood): Captain Lawrence, were you captain of the tug Pilot during the month of May, 1891?

A. Yes sir.

Q. Did you, on the 2nd day of May, 1891, speak the American bark Valley Forge in the waters off the coast of Vancouver Island?

٠,

A. In the Straits of Fuca, about three miles off the Port

San Juan, about ten miles inside the entrance of the Straits located on the south shore of Vancouver Island.

Q. What is the width of the Straits at that point?

A. About twelve miles.

Q. Have you a chart of that part of the Straits?

A. Yes sir.

Q. Is the width given there?

A. No sir.

Q. Do you know Captain Lawrence, how much of these waters, in distance from Vancouver Island, is British waters?

A. Half of the Straits, as I have always understood.

Q. What distance then would be within British waters?

A. Six miles.

Q. All within six miles from San Juan would be British waters?

A. Yes sir: my bearing of the point was four miles.

Q. At what time was it that you saw the Valley Forge?

A. When I was first coming down the Straits, about 3 o'clock.

Q. What time did you speak them ?

A. Oh, between 4 and 5 o'clock.

Q. What took place then ?

A. I hailed the captain of the ship and asked where he was bound.

Q. What did he say?

A. He told me he was bound to Departure Bay; that is in British Columbia.

Q. Go on and state to the Court all that took place between you and the captain.

A. We talked there for probably half an hour or so making a bargain about the tow.

Q. What was the conversation?

A. That would be about the tow. At last we came to a bargain about towing him to Departure Bay ; then he asked

me if I could call at Port Angeles with him ; I says, "Yes ; as long as you are in our waters, I can." He says, "you are all right, you are way over on the Vancouver shore by a long way."

Q. Was there any contract about towing from Departure Bay out?

A. I asked him to take notice of where he was—his position.

Q. After arriving at Departure Bay what else were you to do?

A. Tow him from where he was then to Departure Bay, calling at Port Angeles, and when he was loaded to tow him to sea.

Q. Did you at that time take the exact point of your location when you picked up the Valley Forge?

A. Yes, we always do.

Q. At what point was that?

A. The east point of San Juan, bearing southwest four miles.

Q. Have you any evidence of the correctness of that?

A. I don't know about the bearing, but I have evidence of the distance.

Q. Did you make any record at the time that you took her in tow?

A. Yes, by the log-book.

Q. Have you got that log-book here?

A. Yes sir, it is here somewheres.

(Book produced.)

Q. Is that the log book?

A. Yes sir.

Q. Have you any record in that book of the time when you first began to tow the Valley Forge?

A. Yes sir; we always make a record.

Q. (Referring to log-book) In the first place, what was the date?

A. Second of May, Saturday.

Q. Read the record please.

A. Saturday, May 2nd,-

Q. (Mr. Winston): Who made that record?

A. I did.

Q. Let me see that please (Referring to log-book).

Mr. Winston: If your Honor please, I don't know that this record is evidence.

Mr. Wood: I will ask him a few preliminary questions to show that this book is regularly kept, and that the entry was made.

Q. (Mr. Wood): You stated that the entry was in your own handwriting?

A. Yes sir.

Q. How soon after taking the boat in tow did you make this entry?

A. Generally about every six or eight hours.

Q. Do you recollect how soon after actually taking the boat in tow you made this entry?

A. No more than two hours anyway. It would be sometime about 8 o'clock.

Q. Is it or is it not your custom to make an entry in such cases?

A. Whenever we take a ship up we make an entry, and whenever we pass any prominent points we mark the time down.

Q. Of what did this entry consist of at that time?

A. Whenever we picked the ship up or whenever we passed any prominent points we put the time down.

Q. Did you put down the place?

A. Yes sir.

Q. Is that in that entry?

A. I suppose so.

Mr. Wood: I wish to offer that log-book in evidence.

21

Mr. Winston: The point in this case is to establish the place at which this towing began. I do not see how this log-book record establishes that. I object to it because it is incompetent.

The Court : Objection sustained.

Mr. Wood: 1 wish an exception, if your Honor please.

The Court: Exception allowed.

Q. (Mr. Wood): Do you know of your own knowledge that this point where you first picked up the bark Valley Forge was actually in British waters?

A. Yes sir, I am certain it was.

Q. Did you, after you first began towing the Valley Forge tow the Valley Forge in British waters?

A. Towed her in Vancouver shore to get the tide,—to keep the tide.

Q. State what took place.

A. I towed her up to the Vancouver shore, and then I slowed the boat down to go into Angeles in daylight, and went across slowly and went in.

Q. On what day did you reach Angeles?

A. On the morning of the 3rd.

Q. What occurred after that?

A. I anchored the ship there and went ashore and the captain of the ship went ashore, and we were there probably three or four hours, I think; and he told me he wouldn't be able to get through his business, and that he would have to go to Townsend, and he wouldn't be able to get back until Monday.

Q. What day of the week did you leave the ship there?

A. It was Sunday.

Q. Did he state any reasons?

A. He said something about his papers, I didn't ask him

what reason, but he told me he couldn't get through his business; he had to telegraph his owners.

Q. What arrangements did you make with him then?

A. I told him I had a ship in Departure Bay to take to sea, and I would go to Departure Bay and take the, ship to sea and call on the way back for him, and he would probably be ready.

Q. Call for him at Port Angeles?

A. Yes sir, and then I cleared the Pilot and went to Departure Bay and done the tow I was to do.

Q. Was there anything said to you when you were about to leave?

A. Not a word. The collector gave me the clearance.

Q. Did you tow the vessel from Departure Bay to the sea?

A. Yes sir; and then cleared from Departure Bay to Port Angeles, towed the ship down and let her go.

Q. What day did you reach Port Angeles on your return?

A. On the 6th, I think.

Q. Was the tug seized on that day?

A. It was held there.

Q. For how long a time?

A. I was there about twelve or thirteen days; I came back and then he wouldn't clear me again. I came back to tow the ship Valley Forge, and I then telegraphed for another boat to British Columbia.

Q. Was she a foreign boat?

Mr. Winston: Objected to.

The Court; Sustained.

Q. Mr. Wood: Another boat came to do the work that you were to do?

A. Yes sir.

Q. And you were held?

A. I was held; or, at least, the boat was held there.

Cross-examination :

Q. (Mr. Winston): Captain, you were captain of the tug Pilot were you?

A. Yes sir.

Q. Did you own any interest in her?

A. No sir?

Q. Did not then own any interest. or do you now?

A. No sir, and never expect to.

Q. Will you please indicate on this chart the point at which you took up this vessel?

A. If I had anything to measure by I could come very near to it.

Q. Well, just measure.

A. I think, as near as I can judge, this would be about it. (Point where 'Valley Forge' was taken in tow by the tug Pilot indicated approximately by a black dot south of San Juan Point).

Q. What time of day was it you first picked that up?

A. When I first see them they were fifteen miles off, when I saw them first, and it would be half-past four or five o'clock when I picked them up.

Q. Where were you that morning?

A. Victoria.

Q. To go where?

A. To go seeking, with a clearance for Port Angeles

Q. You cleared from Victoria for Port Angeles to go out seeking?

A. Yes sir, as we generally used to pick up these vessels.

Q. How far is it from Victoria to the point at which you picked up this boat?

A. Probably, as near as I can judge, about fifty miles.

Q. What time did you leave Victoria, Captain?

A. I really forget; sometime in the forenoon.

Q. Didn't you leave six o'clock in the morning?

A. Yes, but we didn't run down full speed.

Q. I didn't ask you about how fast you run. Now, you left there about six in the morning?

A. Yes sir.

Q. How fast does your tug boat run?

A. About nine knots.

Q. About nine knots; now, in five hours and a half that would bring you to the place you picked up this boat if you went right directly there?

A. Yes sir.

Q. That would bring you there about half past eleven?

A. If we went directly.

Q. Did you go directly.

A. No sir.

Q. Where did you go?

A. First when I left Victoria I saw a ship coming up by the "Race"—

Q. What is the "Race"?

A. "Race Rocks."

Q. Well, what is that?

A. (Indicating point).

Q. I understand. Go ahead.

A. A ship was coming up by the "Race." We come up from here (indicating) and went to see what ship it was.

Q. Then where did you go?

A. The ship was running up in the direction of Townsend, and after chasing her about half way up to Townsend I started for Cape Flattery again.

Q. What ship was that?

A. I didn't speak her.

Q. Why?

A. Because I saw she was bound to Townsend.

Q, You couldn't describe her? How near did you get to her?

A. Probably about four miles.

Q. How could you tell she was bound to Townsend?

A. By the way she was running; she was steering for Townsend.

Q. She may not have been going to Vancouver?

A. No sir.

Q. Nanaimo?

A. She might have after she got to Townsend.

Q. Did the captain of the bark seem to have some doubt about your right to tow him?

A. No sir.

Q. You discussed it some with him?

A. No sir; we discussed about the rates of towing and the prices.

Q. Didn't you discuss with him about your rights to take him at the point he was at?

A. He asked me if I could tow him to Departure Bay and call at Port Angeles. He asked me if I could.

Q. What do you mean?

A. I told him yes, if he was in our waters.

Q. And he told you that he was?

A. No sir. I said, "look where you are and take your position."

Q. Then you and he did go as far in this discussion as to take position to there determine whether or not you had a right to do this work?

Precisely, yes; that was the idea.

Q. You say the best you could fix it by taking an observation was that you were about four miles south-east of San Juan Point?

A. Yes sir?

Q. How wide is this strait there?

A. About twelve miles.

Q. Then you were about a mile outside of the three-mile limit?

A. No, not that far.

Q. Well you were about to the three-mile limit, and you were about three miles, according to your idea—

A. Off the shore.

- Q. About the middle of the strait?
- A. Yes sir.

Q. Where was the bark coming from? Captain.

A. From San Francisco; at least, I had seen her clearance from there sometime before that.

Q. Did you see any clearance papers at this time that you were seized for towing her?

A. I seen that she was from San Francisco. I knew that she was in that trade.

Q. Did you see her clearance papers?

A. No sir, I saw her clearance in the newspapers.

- Q. On this voyage?
- A. On the voyage I picked her up.
- Q. In what paper?
- A. The "Examiner."
- Q. Where is that published?

A. San Francisco,

Q. What date did she clear?

A. I don't know the date; we didn't take the dates; we know the vessels are about due.

Q. What did she go to Port Angeles for?

A. Something about these papers I believe; that is what he told me, and he had to go to Port Townsend to fix them up.

Q. He had to go to Port Angeles; he told you about some paper connected with the custom-house?

A. Yes sir.

Q. At Port Angeles?

A. No, with his own papers.

Q. With his own ship's papers?

A. Yes sir; and to get papers and letters from his owners that is what he told me.

Q. Was it both or one that he was going to Port Angeles for?

A. Both.

Q. It was a mere casual call in at Port Angeles; he didn't go in there to load or unload?

A. No sir, not that I know of.

Q. Was this ship in ballast?

A. She had ballast to go to Departure Bay and load coal; she might have unloaded; I don't know whether she did or not.

Q. Now captain, when you first saw this ship, this bark, how far was she from the Cape?

A. Which Cape?

Q. Flattery.

A. Well, I couldn't tell you how far.

Q. How far was she from the ocean?

A. She was inside of Port San Juan, probably not half a mile from where I picked her up.

Q. I thought you said just now that she was fifteen miles down?

A. I didn't say from where I saw her; that is, where I first saw her.

Q. How far was she from where you picked her up when you saw her?

A. When I first saw her?

Q. Yes.

A. I couldn't tell you.

Q. How far were you from where you were when you first saw her?

-

A. About fifteen miles up the Straits from where I first saw her.

Q. When you first saw this boat can you state whether she was in American or British waters?

A. To the best of my knowledge she was in English waters, because there was no wind, or little if any.

Q. Can you swear positively that she was in British waters at that time?

A. Not positively because you can't tell when you are fifteen miles away.

Q. You say positively that you never saw her in the ocean?

A. Oh, no; where I was I couldn't see her in the ocean.

Q. You were not in the ocean that day?

A. No sir.

Q. And you state positively that your tug boat was not in the ocean that day?

A. She was not.

Q. Does it ever happen that these boats will go and make a bargain in American waters, and then sail over and get hitched on in British waters?

- Q. Did you ever hear of it before?
- A. No sir.

Q. Did you ever hear it charged against any boats?

A. No sir.

Q. That is not the case with your boat?

A. No sir.

Q. Have you ever heard of that before?

A. I have heard of it about American boats.

Q. You have heard that American boat would get a British boat to come over into American waters and hook it, but never the other way?

A. Yes sir.

A. No sir.

Q. It is not true that this boat did not go over into British water to be towed by you?

A. Not through my suggestion.

Q. Is it true that she did go over into British waters for the purpose of being towed by you?

A. Not that I am aware about.

Q. You were not a party to any such transaction, if it were true?

A. No sir.

Q. You are positive of that?

A. Positive.

Q. Did you ever tow this bark before this?

A. I think I did once.

Q. Who was her captain?

A. Bennel.

Q. Do you know whether she was under enrollment and license?

A. I couldn't say, I never seen her papers.

Q. Where did you tow her to when you towed her before?

A. Towed her from outside; somewheres from the sea.

Q. To what point?

A. To Departure Bay. She was in that trade between San Francisco and Departure Bay.

Q. When did you tow her up there? Since the 5th day of May?

A. Did I?

Q. When did you tow her to Departure Bay?

A. I think I have before and since.

Q. Did you ever tow her up to Departure Bay prior to the 5th of May?

A. I think so.

Q. Can you find it upon that book?

A. I can if it is there. (Witness referring to book.) Yes, here it is.

Q. (Referring to entry in book.) That does not say where you were carrying her to, that just says you brought her inside.

A. Perhaps not that day. Nanaimo, the next day.

Mr. Winston : That is all Captain.

Augustus Warren, a witness produced on the part of the claimant, having been first duly sworn, testified as follows :

Q. (Mr. Wood): What is your full name?

A. Augustus Warren.

Q. What is you occupation Mr. Warren?

A. I am an engineer.

Q. Were you an engineer on the tug Pilot during the month of May, 1891?

A. Yes sir.

Q. You are still the engineer of the tug Pilot?

A. Yes sir.

Q. Do you recollect picking up the bark Valley Forge on or about the 2nd day of May, 1891?

A. I do.

Q. Do you recollect any of the circumstances connected with the picking up of that bark?

A. I recollect of picking her up.

Q. About what point was that?

A. A little inside of Port San Juan.

Q. How far should you say it was from Port San Juan?

A. I should say, to the best of my knowledge she was between two and three miles from the Vancouver shore.

Q. Do you recollect the time of day?

A. I think about five o'clock, when I came on deck.

Q. Did you hear any of the conversation that took place

between the captain of the tug and the captain of the bark Valley Forge?

A. I didn't.

Q. Did you tow the bark Valley Forge about that time, soon after meeting her?

A. Yes sir.

Q. Do you recollect about how far it was that you towed her?

A. We towed her up the Vancouver shore as far as Race Rocks and crossed over.

Q. How far is that from the point of meeting?

A. It is, I think, 38 or 40 miles.

Q. Was that wholly within British waters?

A. I think so as I understand it.

Q. Where did you go then?

A. Crossed to Port Angeles with her.

Q. When did you reach Port Angeles?

A. I couldn't give you the exact time because I wasn't on watch.

Q. I mean the day?

A. I think it was on the morning of the 3rd.

Q. That was the next day?

A. Yes sir.

Q. Did you hear any conversation that took place after you reached Port Angeles, between the captain of the Pilot and the captain of the Valley Forge?

A. No, I can't say that I did.

Q. What was done by the tug Pilot after reaching Port Angeles?

A. We cleared for Nanaimo, for Departure Bay, to take a ship to sea.

Q. Did you take the ship to sea?

A. We did, yes sir.

Q. What did you do then?

A. We returned from sea to Port Angeles.

Q. What happened?

A. I was told that the boat was seized, that we were detained.

Q. How long were you detained there?

A. I think fourteen days.

Q. That is all you know of this transaction?

A. That is all.

Cross Examination.

Q. Mr. Winston. What were you doing when the tug hitched on to the Valley Forge?

A. I was standing on deck.

Q. Now, I ask you if it is not a fact that this Valley Forge crossed over from American waters into the British waters for the express purpose of being towed by the British tug boat?

A. I don't see how she could have, because there was no wind at the time I came on deck.

Q. I ask you if it is not a fact that when she was spoken by the tug boat she was in American waters.

A. 1 couldn't say; when I came on deck, about a quarter of five she was near the Vancouver shore at that time.

Q. How far was the tug boat from the ship?

A. Very close to her, about three-quarters of a mile.

Q. Don't you know it to be true that this tug boat coming down there got the ship to cross over in the British waters for the express purpose of giving you the right to tow her?

A. No sir.

Q. Do you know that is not so?

A. I dont know anything about it.

Q. That is sometimes done, isn't it?

A. I don't know; that is a thing that an engineer never troubles himself about.

Q. That is not within the province of the engineer? A. No sir.

Re-Direct-Examination.

Q. (Mr. Wood): I would like to ask you this question: When you took the bark in tow you were to tow her to Departure Bay?

A. I understood we were, yes sir.

Q. You were so informed?

A. Yes sir.

Q. Do you know whether she went to Departure Bay? Whether the Valley Forge afterwards went to Departure Bay?

A. I saw the tug boat come in and take her out and I was told she went to Departure Bay, afterwards.

Re-Cross-Examination.

Q. (Mr. Winston): You don't know of your own knowledge whether she went to Departure Bay or Townsend, or where she went?

A. No sir. I have reason to think so because I saw her there afterwards.

Q. You don't know what the bargain was—where he was to tow her?

A. The captain told me he was to tow her to Departure Bay.

Q. Before you got to Port Angeles?

A. Yes sir.

Q. Why didn't you go straight over to Angeles after you hitched on this ship?

A. I don't know that.

Q. Sir?

A. I don't know that sir.

Q. Was there any wind that day?

A. No sir, it was very calm.

Q. Enough to fill the sails of the ship, move her along slightly?

A. I shouldn't think she could make any headway.

Q. A knot an hour?

A. No sir.

Q. Two knots?

A. No sir; I am not any sailor, and I shouldn't think she could make any headway with the wind we had.

Captain Lawrence recalled.

Q. Mr. Woods. Do you know whether the bark Valley Forge actually went to Departure Bay?

A. Yes, I know she did.

Q. I mean immediately after you were held up?

A. I towed her to sea about two weeks after that, loaded with coal.

Q. From Departure Bay?

A. Yes sir.

Q. You yourself towed her?

A. The boat that I was in.

Q. I mean the boat of which you were captain.

A. Yes sir; she was a trader; she traded there all the time; in fact she is due there now.

Q. She was plying between there and San Francisco?

A. Yes sir.

Q. Do you know whether she is due there now?

A. Yes sir; from Santiago now. She is a boat that has been engaged in that trade between both San Francisco and Santiago; she is a regular trader.

UNITED STATES OF AMERICA.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

THE UNITED STATES

Libelant,

vs.

THE STEAM TUG PILOT, Her Steamers, Engines, Boilers, Etc.,

Claimant.

Continuation of trial before Hon. James Kiefer, United States Commissioner, October 3rd, 1891.

United States Attorney Patrick H. Winston, for the libelant and Messrs. Burke, Shepard & Wood, for the claimant.

John J. Bennett, a witness called on the part of the claimant, having been first duly sworn, testified as follows:

Q. (Mr. Wood): Captain, are you the captain of the Valley Forge?

A. I am.

Q. Were you captain of the Valley Forge in May, 1891?

A. Yes sir.

Q. During the month of May, 1891?

A. Yes sir.

Q. Do you remember coming through the Straits of San Juan De Fuca about the 2nd of May, 1891.

A. Yes sir.

Q. Did you meet the tug boat Pilot in the Straits of San Juan De Fuca on that day?

A. Yes sir.

•

Q. Do you recollect about the point that you met the tug Pilot?

A. Yes sir.

Q. Where was that point?

A. Off the entrance of San Juan harbor.

Q. Port San Juan?

A. Yes sir.

Q. How far is that inside the Straits?

A. I should judge about ten or twelve miles; about that.

Q. Were you and the Valley Forge at that time in British waters?

A. Yes sir.

Q. How wide is the Strait at that point?

A. I should judge about twelve miles.

Q. About how far were you from San Juan?

A. About three miles.

Q. Port San Juan is on Vancouver's Island?

A. Yes sir.

Q. And about how far inside of the Straits from the sea?

A. I should judge between ten or twelve miles.

Q. Do you recollect what time it was when you met the Pilot?

A. I think it was somewheres between four and five in the afternoon; I could not recollect exactly.

Q. That was the first you saw of her?

A. I saw her coming down the Straits before that, probably an hour or an hour and a half before.

Q. Before she actually spoke to you?

A. Yes sir; it was a clear day and I could see her a long ways.

Q. Were you in British waters all the time?

A. No sir; I was beating from one shore to the other.

Q. Was there very much wind at that time?

A. No sir; only a moderate breeze.

Q. What took place when the tug spoke you?

A. He came up along side and asked me where I was bound to, and whether I wanted a tug; and I told him I was bound to Nanaimo to load with coal.

Q. Did you make a contract?

A. Yes sir.

Q. What was that contract?

A. To tow me to Nanaimo, and back to sea by way of Port Angeles.

Q. About how much was paid for that towing?

A. It was between six and seven hundred dollars.

Q. Did the Pilot take you in tow then?

A. Yes sir.

Q. And what was the course that you followed?

A. Well, we towed up close to the Vancouver shore.

Q. How far did you run in British waters?

A. We went up very near to Race Rocks.

Q. How far is that do you think?

A. I don't know exactly; I suppose it is forty miles, ai'nt it; somewheres in that neighborhood; I wouldn't say exactly.

Q. Then where did you go?

A. Then we went across to Port Angeles.

Q. You went across, or the Pilot towed you across, at your request?

A. Yes sir.

Q. After you got to Port Angeles you were unable to go on, were you?

A. Yes sir; I had to go to Port Townsend for to get a register.

Q. And did the captain of the Pilot leave you then?

A. Yes sir.

Q. And the Pilot cleared ?

A. The Pilot cleared; I suppose she went away; she was to tow another vessel to sea.

Q. You understood that she was to tow another vessel to sea?

A. Yes sir; I understood that she was to tow another vessel to sea, and then take me back.

Q. Do you know what happened?

A. Yes sir; she was seized then.

Q. By whom?

A. By the deputy collector.

Q. Do you know for what she was seized?

A. She was seized for towing me in there to Port Angeles.

Q. The contract was to tow you from the point where you met to Port Angeles, then to Departure Bay, and from there to sea?

A. Yes sir.

Q. The Pilot did not tow you out of Port Angeles?

A. No sir?

Q. The Pilot was held there?

A. Yes sir.

Q. What boat did tow you out?

A. The boat Lorne.

Q. From there where did you go?

A. To Departure Bay.

Q. Who towed you out to sea?

A. The Lorne.

Q. You did not go up the Sound at all?

A. No sir.

Q. You did not come into any American Port except Port Angeles?

A. No sir.

Q. Did you load anything at Port Angeles?

A. No sir.

*

Q. You were in ballast?

A. Yes sir.

Q. And you continued in ballast until you got to Nanaimo?

A. Yes sir—Departure Bay.

Q. When you got to Nanaimo what did you load with? A. Coal.

Q. From what port?

A. San Francisco.

Mr. Wood: I think that is all for the present.

Cross-Examination.

Q. (Mr. Winston): When the Valley Forge left San Francisco she was not a registered vessel, was she?

A. No sir, not at the time; she was a documented vessel.

Q. Sailing under a twelve mouths' license?

A. Yes sir.

Q. Coastwise?

A. Yes sir.

Q. She did not have to clear when she left San Francisco?

A. No sir, she didn't have to.

Q. So when you left San Francisco you left to go to Port Angeles there to stop until you could have your ship registered?

A. Yes sir.

Q. And after you had her registered you intended to leave Port Angeles for Nanaimo?

A. Yes sir; that is correct.

Q. You did not intend to go to Nanaimo without clearing?

A. No sir.

Q. You entered the Straits and beat along the Straits, tacking.

A. Yes sir

Q. And when you tacked over to the British side you met the tug?

A. Yes sir. That is correct.

Q. You are sure it was not on the American side?

A. I am sure it was on the English side.

Q. Did you ever hear of a custom—well, I'll hardly call it a custom, but did you ever hear of ships being on the American side and then sailing over to the British side to be hitched on in order to avoid the American Navigation laws?

A. Well, I don't know of any, but I have heard of it but didn't know of it myself. I saw the tug Pilot coming down the Straits.

Q. You didn't know where she was coming from?

A. No sir, I didn't know where she was coming from.

Q. Let me see if I understand this: The Valley Forge, an American ship, not registered, but under coasting license, in your command, started from San Francisco to Port Angeles for the purpose of stopping there until you could go to Port Townsend and take out a registry—

A. Yes sir.

Q. —and then come back and clear from Port Angeles and go to Nanaimo—

A. Yes sir.

Q. —was picked up by the British tug Pilot in the Straits over on the British side where she had tacked over to catch the wind?

A. Yes sir.

Q. Is that correct?

A. Yes sir.

Mr. Winston: That is all.

Q. (Mr. Wood): Had the tug Pilot ever towed you before into Departure Bay?

A. Yes sir.

Q. I mean before May, 1891?

Mr. Winston: Wait a minute, brother. I believe it is necessary to take exceptions in order to save these exceptions, and I except to that question.

A. Yes sir.

Q. (Mr. Wood): Has the tug pilot ever towed you into Departure Bay since May, 1891?

Mr. Winston : Exception.

A. Since May?

Q. (Mr. Wood): Yes.

A. No sir. Not since May.

Q. Do you recollect the day when the tug Pilot was seized, —the day of the month?

A. I think it was on the 5th.

Q. Do you recollect what day of the week that was?

A. Yes sir; but let's see,—I came in on Sunday, the 3rd. Monday was the 4th, Tuesday was the 5th. It was on Tuesday I think.

Q. You are sure?

A. No sir, I am not sure.

Q. The 5th might have been Monday?

A. No sir, I am not sure of that.

Q. The Valley Forge has been engaged in the coal business, has it,—carrying coal back and forth between Nanaimo and California.

Mr. Winston : Please enter an exception to that question. A. Yes sir.

(Mr. Wood): How long have you *been captain of the Valley Forge?

A. I have been captain of the Valley Forge since the 17th of September, last year.

Q. Of 1890?

A. Yes sir.

Q. And you have been on the run from California to Nanaimo ever since?

Mr. Winston; Exception entered.

A. Yes sir.

Mr. Wood : That is all, Captain.

Q. (Mr. Winston): Do I understand you to say that you have been trading between San Francisco and Nanaimo under a coastwise license?

A. No sir; under a registry.

Q. The time you went to Nanaimo, as spoken of by counsel, this was a registered ship, and it was cleared?

A. Yes sir.

Q. You never undertook to go from San Francisco to Nanaimo when the ship was not registered?

A. No sir:

James Christenson, a witness called on the part of the claimant, having been first duly sworn, testified as follows:

Q. (Mr. Wood): Are you the captain of the tug Lorne?

A. Yes sir.

Q. How long have you been captain of the Lorne?

A. Since March, 1891.

Q. Where does the tug Lorne belong?

A. In Victoria.

Q. You were captain of the tug Lorne in May, 1891?

A. Yes sir.

Q. Did you on or about May 5th tow the bark Valley Forge from Port Angeles to Nanaimo?

Mr. Winston: Objected to.

A. Yes sir.

Q. (Mr. Wood): And you actually reached Nanaimo with the Valley Forge.

Mr. Winston : Objected to.

A. Yes sir.

Q. (Mr. Wood): Do you know whether or not the Valley Forge came to any port on Puget Sound?

A. No sir, I do not.

43

Q. Did you tow the bark Valley Forge from Nanaimo to the sea?

Mr. Winston : Objected to.

A. Yes sir.

Q. (Mr. Wood): Do you know whether the tug Pilot was detained at Port Angeles?

A. Yes sir; I do.

Q. Do you know why the tug Pilot was detained at Port Angeles on May 5th?

Mr. Winston : Objected to.

Mr. Wood: I will withdraw that; that is not material-Q. (Mr. Wood): You know that the tug Pilot was actually detained?

A. Yes sir.

Q. Where did the tug Pilot belong?

A. Victoria.

Q. I presume captain, you saw nothing of the matter in in the Straits.

A. No sir.

Q. All you know about the transaction is—you don't know anything at all about this transaction?

A. No sir.

Mr. Wood: That is all.

Cross Examination.

Q. (Mr. Winston.) What is the name of your tug boat?

A. The Lorne.

Q. You came over from Victoria to Port Angeles?

A. Yes sir.

Q. On what date, sir?

A. Fifth.

Q. Fifth of what?

A. May.

Q. Of this year?

A. Yes sir.

Q. And there hitched on to the bark Valley Forge?

A. Yes sir.

Q. And towed her from Port Angele to Nanaimo?

A. Yes sir.

Q. Where is the Lorne now?

A. Seattle.

Mr. Winston: That is all, sir.

Thomas Lawrence, a witness called on the part of the claimant having been first duly sworn testified as follows:

Q. Mr. Wood. Captain Lawrence, in your cross-examination, when you were examined before Judge Hanford, you testified to leaving Victoria and running down towards Port Townsend. I wish you would explain that—on the morning of May 2.

A. I didn't run down towards Port Townsend when I left Victoria.

Q. Account for your time during that day.

A. I got down to Race Rocks and I saw a ship running up the Straits—probably ten or twelve or fifteen miles up the Straits. I headed the boat up after the ship for probably an hour or an hour and a half, and then I saw that the ship was headed towards Port Townsend, and then I could tell by that that she was bound into Port Townsend, or somewheres on the American side, and I knew that there was no use going after her, and I then turned back and run down the Straits.

Q. How far are Race Rocks from Victoria?

A. They are south between nine and ten miles.

Q. How long a time did that consume?

A. It would take me an hour or a little better to go down to the Race, and run back in an hour and a half—it would be about four hours or so. Q. What did you do after that?

A. We started down the Straits and I saw a ship on one side

Q. You have testified that you sighted this Valley Forge about fifteen or twenty miles away.

A. Probably about fifteen miles; it was a clear day.

Q. At the time you saw her you were quite a long distance down the Straits?

A. Yes sir.

Q. Now I wish you would explain your location. I think your location as you explained it before—there was one instance in your examination-in-chief, you said you were at "the east point of San Juan, bearing southwest four miles."

A. Northwest; four miles off San Juan.

Q. And what was that—how far distant was that from the Vancouver shore?

A. That would bring her three or two and three-quarters off the land; that is to the best of my judgment; we couldn't measure the distance exactly.

Q. What was the day of the month that you were seized?

A. We were seized on the 5th, if I remember rightly.

Q. Did you know anything about the papers of the Valley Forge, Captain?

A. No sir.

Q. You did know that the Valley Forge had loaded coal in Nanaimo?

A. I knew that she had been trading there.

Q. You had towed that same boat before, had you not?

A. Yes, that is, while I was master of the boat, and I think she had towed her before while I was mate of her.

Q. And you kept the log-book at that time?

A. Yes sir. There was an old log-book that was kept before by Captain Hill. Q. The tug Pilot was tugging (towing) into Nanaimo bebore 1891?

A. Yes sir.

Q. Do you recollect whether you ever towed them before in 1891?

A. I think I have once since, but I won't be certain.

Q. From Nanaimo?

A. Yes sir. We could hardly remember all the ships that we tow, but I think I have towed her once; the logbook will show all right. I think I have towed her once to sea.

Q. Now, I want you to explain, Captain, why it was, from the point of meeting, you went down along the Vancouver shore thirty miles?

A. Now, on one side of the Straits the tide will run stronger than on the other at times. If it is ebb tide we keep the American shore, if on the flow, the Vancouver shore; whichever way we can make the quickest time.

Q. From the point of meeting, I think you said you towed the Valley Forge thirty miles in British waters?

A. Probably more than that.

Q. How much more?

A. I think within two or three miles of the Race.

Q. And you said these were nine miles south of Victoria?

A. Yes sir.

Q. And when you got to that point, at the request of the captain you run over to Port Angeles?

A. He didn't request it then, but that was the agreement.

Q. And you did strike across to Port Angeles?

A. After getting up there, yes.

Q. You expected to go right on to Departure Bay?

A. As soon as he went in there and he fixed his business up.

Q. You don't know that the Valley Forge loaded or unloaded there?

A. I didn't see anything.

Q. That is the usual way of coming in when the tide is in the condition it was when you were in there?

A. Yes sir, it is according to the tide.

Q. You could make better time?

A. Yes sir, sometimes we go down the Vancouver shore and sometimes down the American shore.

Q. It was more favorable at that time for you to go up that way?

A. Yes sir.

Q. How heavy was this tow?

A. A ship of about thirteen or fourteen hundred tons?

Cross-Examination.

Q. (Mr. Winston): When you left Victoria to go to the point at which you hitched on to this bark would you shape your course to this Race?

A. You go south to go to Race Rocks and west going down the Straits.

Q. In going down the Straits you do not ordinarily go past Race Rocks?

A. Yes sir.

Q. When you are on your regular route from Victoria to the sea?

A. Yes, but not from Victoria; we were bound up the Straits. We left—

Q. I want to ask you if you were going from Victoria to Port San Juan would you go by Race Rocks from Victoria?

A. If we were bound there?

Q. Well, if you were bound there?

A. Yes sir.

Q. You understand my question?

A. Yes sir.

Q. (Counsel and witness referring to map): Show me Race Rocks there.

A. I sighted the ship over about where the A in the word "Fuca" is on the map. That is the first ship you know; not the Valley Forge; we didn't sight her there.

John J. Bennett, recalled.

Q. (Mr. Wood): You recollect Captain Bennett, that the Pilot did tow you once after May, 1891?

A. To sea.

Q. From what point to what point?

A. From sea; that was three voyages ago.

Q. If you can recollect.

A. It is every month with us and there is so much of it.

Q. You have been accustomed to be towed back and forth from Nanaimo to sea?

A. Yes sir.

Q. By British tugs?

A. Yes sir, and American tugs, too.

Q. And American tugs?

A. Yes sir; whichever come the handiest.

Q. Do the American tugs tow upon your side, too?

A. Yes sir.

Mr. Wood : That is all.

(At this point Mr. Winston directed several interrogatories to Captain Thomas Lawrence, not having recalled him to the stand formally, in relation to American tugs towing from point to point in British waters, and your reporter, imagining it was more for the purpose of information to counsel than for record, failed to take the same. District Attorney Winston then followed with the following questions, and requested that they be noted):

Q. You say that American boats tow in British waters from one place to another in British dominion?

A. Yes sir; if they take the boat in American waters they do.

Q. You mean to say that American tow boats tug from American waters over to British waters?

A. Yes sir.

Q. And that is all you mean to say?

A. Yes sir.

Cross-Examination of Witness John J. Bennett.

Q. (Mr. Winston): You say that this tug boat has towed you not very long ago from Nanaimo to sea?

A. Yes sir.

Q. Now I will ask you if when she did that if yours was not a registered boat?

A. Yes sir.

Q. And if you did not clear from Nanaimo for San Francisco?

A. Yes sir.

Q. And Nanaimo is in British waters?

A. Yes sir.

Q. And she is a British tug boat?

A. Yes sir.

Q. And she hitched on to you at a British custom house?

A. Yes sir.

Q. And you were bound to an American port?

A. Yes sir.

Mr. Winston: That is all.

Mr. Wood: I object to this examination in relation to towing from a British port out to sea; I object to these general questions about British tug boats towing from Nanaimo to sea when the boat goes to California.

Re-Direct Examination.

Q. (Mr. Wood): The tug Lorne—I believe you answered this before—the tug Lorne hitched on to you at Port Angeles and towed you to Nanaimo? Mr. Winston, Objected to.

A. Yes sir.

Q. And that was before you were a registered vessel?

A. Yes sir, I was registered.

Q. You were a documented vessel?

A. Yes sir, but I got my registry at Port Townsend. Port Angeles was not a full port of entry at that time.

Q. That towing was partly in British waters?

A. Yes sir.

Q. Captain, do not British tug boats tow American documented vessels from Port Angeles, and other ports in that vicinity, bound to San Francisco?

Mr. Winston: Objected to.

A. Documented vessels?

Q. Yes.

A. I couldn't say; I don't know.

Q. A documented vessel that loaded lumber on the American side for instance—a documented vessel would not go on the British side?

Q. (Mr. Winston): As she was tacking?

A. Oh, yes, she could sail on their waters.

Q. (Mr. Wood): Did you ever hear of an American tug boat towing from sea into a British port?

A. Yes sir.

Q. You have been towed that way yourself?

Mr. Winston: Objected to.

A. Yes sir.

Q. (Mr. Wood). And from American waters into a British port?

A. Yes sir.

Re-Cross examination.

Q. (Mr. Winston): Captain, did you ever hear of an American tug boat being seized over in British Columbia, and condemned over there by the Courts, for towing in British waters.

Mr. Wood. I object to that question.

A. They had some trouble here a short time age about some tug boats towing some scows.

Q. Don't you know that one of them was seized in the Courts and by thy Courts?

Mr. Wood: Objected to.

A. I don't know any of the particulars about it, but I have heard of it.

Q. I don't want the particulars; I want to know if you do not know as a common fact that an American boat was seized there and condemned in the Courts?

(Mr. Wood): Objected to as immaterial.

A. Yes sir, I have.

Q. (Mr. Wood): Do you know the name of that boat? Do you know the name of any such boat? It was not the tug Pilot, was it?

A. No sir.

Q. Do you know the name of the boat?

A. Which? The American boat?

Q. Yes.

A. The Mogul.

Q. The Mogul?

A. Yes, she was one, and the other was the Frost. I don't recollect anything much about it.

Q. You don't know anything about the circumstances?

A. No sir, I don't know anything about it.

(Mr. Winston): Is that all, Mr. Wood?

(Mr. Wood): That is all, yes sir.

Q. (Mr. Winston): What papers was your boat sailing under, the Valley Forge?

A. She was under enrollment and license.

Testimony closed.

DISTRICT OF WASHINGTON.—ss.

I, James Kiefer, U. S. Commissioner, do hereby certify that the foregoing is a true and correct transcript of the testimony taken in above case before me this 3rd day of October, 1891.

> JAMES KIEFER, U. S. Commissioner.

> > .

UNITED STATES DISTRICT COURT, DISTRICT OF WASHINGTON, NORTHERN DIVISION.

THE UNITED STATES OF AMERICA,

vs.

THE STEAM TUG PILOT, ETC.

Opinion filed October 30, 1891.

IN ADMIRALTY.

P. H. Winston, U. S. Attorney, for Libelant. Burke, Shepard & Woods, for Claimant.

Hanford, J:---

This is a case of seizure to enforce a penalty imposed by The facts are as follows: The Section 4370 U.S.R.S. Pilot, is a British Steam tug engaged in the business of towing upon the Strait of Juan de Fuca, and other waters of this State and British Columbia. The bark Valley Forge, is an American enrolled vessel of 1286 tons burden engaged in coast wise trade, and being bound on a voyage from San Francisco to Port Angeles, entered the Straits without assistance, and was beating against a headwind toward her port and destination. The Pilot found her on the north side of the Strait and within three miles of the shore of Vancouver Island, near Port San Juan, where she had sailed upon her port tack, and towed her across the Strait to Port Angeles pursuant to a contract made with her master at the time, to, tow the Valley Forge, first to Port Angeles, thence to Departure Bay in British Columbia, to load and thence to The Valley Forge, remained at Port Angeles while her sea. master went to the custom house at Port Townsend, for the purpose of exchanging her certificate of enrollment for a register to entitle her to clear for a foreign port, and she was afterwards towed from Port Angeles to Departure Bay, by a

British tug, under the contract made with the master of the Pilot.

Section 4370, R. S, is the same as the twenty-first section of the act of July 18, 1866, entitled "An act to prevent smuggling and for other purposes." (14th U. S. Statutes 183,) as amended by the act of 1867 found on page 410 of the same volume. It reads as follows:

"Sec, 4370. All steam tug boats not of the United States found employed in towing documented vessels of the United States plying from one port or place in the same to another, shall be liable to a penalty of fifty cents per ton on the measurement of every such vessel so towed by them respectively which sum may be recovered by way of libel or suit. This section shall not apply to any case where the towing in whole or in part is within or upon foreign waters. * * *" Originally the section contained no exceptions, the last clause was added by the amendatory act.

The exact question now presented for decision is this; Does the mere fact that a vessel is making a passage of the Strait crosses the inter-national boundry line, legalize a towage service which would be a violation of Section 4370 if performed wholly on the American side?

This Strait is an arm of the sea wholly within the jurisdiction of the United States and Great Britain, as part of the territory of the two countries, and is not like the open ocean, a free highway for the ships of all nations. By treaty stipulations the boundry between the two countries is upon a line following the middle of the Strait, and all that part of it north of the middle is British water, and all south of the line is American water. But by the treaty the entire Strait is free and open to both countries for purposes of navigation so that the vessels of each are free to sail anywhere in the Strait upon either side of the line. It is my opinion that while this treaty remains, no part of the Strait can be regarded as *foreign waters* to either American or British vessels. The Appollon, 9th Wheaton, 362. And further that the term "foreign waters" as used in section 4370 means water under the exclusive dominion of a foreign government for all purposes. My conclusion is that foreign tugs are not privileged to tow American vessels bound from one American port to another on either side of the Strait. And that a penalty has been incurred by the tug Pilot as charged in the liabel in this case.

C. H. HANFORD,

Judge.

IN DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

THE UNITED STATES,

vs.

Findings of Fact.

STEAM TUG PILOT, her tackle, apparel, furniture, etc.

This cause coming on to be heard this 6th day of October, 1891, in open Court, the Court upon the evidence introduced upon the trial of said cause, makes the following findings of fact:

1. That the said steam tug Pilot, during all the times mentioned in the libel, was and is a British steam tug, engaged in the business of towing upon the Straits of Juan de Fuca and other waters of the State of Washington and British Columbia.

2. That the bark Valley Forge, during all the time mentioned in the libel, was and is an American enrolled vessel of 1286 tons burden, engaged in coastwise trade, on the Pacific coast. That on May 3, 1891, the said bark Valley Forge was bound on a voyage from San Francisco, California, to Port Angeles, in the State of Washington, and

upon said voyage entered said strait of Juan de Fuca without assistance, and was beating against a headwind toward her port of destination.

3. That the said tug Pilot found the said bark Valley Forge on the north side of said Strait, and within three miles of the shore of Vancouver Island, near Port San Juan, where she had sailed upon her port tack, and the Pilot then towed her across the Strait to Port Angeles, a contract being made at the time with the master of said Valley Forge, that she should be towed by the said tug Pilot, first, to Port Angeles, thence to Departure Bay, in British Columbia, to there load, and thence again to sea.

4. That the Valley Forge remained at Port Angeles while her master went to the Customs House at Port Townsend, in the customs district of Puget Sound, for the purpose of exchanging her certificate of enrollment for a register, in order that she might be entitled to clear from a foreigh port.

5. That the Valley Forge was afterwards towed from Port Angeles to Departure Bay by another British steam tug under the contract made with the master of said Pilot.

6. That the said vessel Valley Forge, in making its passage of the said starit, crossed the international boundary line between the United States and British Columbia.

7. That the said tug Pilot was not at the time it did the towing, as aforesaid, or at any time, a tug boat of the United States, but it was a tug boat owned by foreigners residing at Victoria, British Columbia.

8. That the said tug boat Pilot, by reason of doing the said towing as aforesaid, became liable to a penalty of \$643.

9. That on May 5, 1891, upon the waters of Puget Sound, and within the customs district of said Puget Sound, and within the northern division of said district of Washington, the Hon. C. M. Bradshaw, the duly qualified and acting collector of customs of said district of Puget Sound, did seize and take into his possession as being forfeited to the United States the said steam tug Pilot, her engines, boilers, machinery, tackle, apparel, furniture, etc., for having towed said Valley Forge, as aforesaid, after said Pilot had done the towing, as aforesaid; and, before the filing of the libel of information herein, the said collector of customs assessed a penalty of \$50 per ton of the tonnage of the bark Valley Forge against the said steam tug Pilot, her said engine, boiler, machinery, tackle, etc., which penalty has not been paid.

10. That at the time of the filing of the libel in this case, the said collector of customs aforesaid, still held said Pilot, her engine, boilers, machinery, tackle, etc., in his possession, under said seizure, and she has been duly attached and taken into the custody of the United States Marshal under the warrant issued from this Court.

11. That after the arrest of the Pilot by the Marshal, as aforesaid, her master Thomas Lawrence in behalf of her owner filed a claim and also a stipulation in the sum of two hundred and fifty dollars, with J. Keith Wilson and Robert⁴ Croft as sureties conditioned to pay all costs that may be decreed to be paid by said claimant and also a further stipulation in the sum of fifteen hundred dollars with R. Lea Barnes and Robert Croft as sureties conditioned to abide by and satisfy the decree herein.

12. That upon the filing of said claim and stipulations the Pilot was by order of the Court released from custody.

C. H. HANFORD, Judge. And on the back of the foregoing is endorsed the words and figures following:

Filed Nov. 24, 1891, in the U.S. District Court.

R. M. HOPKINS, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

THE UNITED STATES VS. STEAM TUG PILOT, Her Tackle, Apparel, Furniture, Etc. Decree.

Now, on this 24th day of November, 1891, the said Court having made its findings of fact in the said cause; and it appearing therefrom that said steam tug Pilot, her engines, boilers, machinery, tackle, etc., is subject to a penalty of \$643, for violation of Section 4370 of the Revised Statutes of the United States, which penalty has already been assessed by Hon. C. M. Bradshaw, Collector of Customs for the District of Puget Sound, against the said steam tug Pilot, her engines, boilers, machinery, tackle, apparel, furniture, etc., and, it further appearing that Joan Olive Dunsmuir has duly made claim to be the owner of the said steam tug Pilot, her tackle, apparel, etc.; and that said claimant has also entered into a bond for the release of said vessel, with R. Lea Barnes and Robert Croft as sureties,

It is, therefore, ordered, adjudged and decreed that the United States do have and recover of and from said claimant Joan Olive Dunsmuir on said bond, the sum of (\$643) six hundred and forty-three dollars, with costs of the libel; and, if the said claimant do not within twenty days from the date hereof pay into Court said sum of six hundred and forty-three dollars, together with said costs judgment shall be entered upon the said bond, on motion in open Court, without further delay, against the sureties named in said bond.

> C. H. HANFORD, Judge.

And on the back of the foregoing is endorsed the words and figures following:

UNITED STATES

vs. Tug Phon

STEAM TUG PILOT.

Filed Nov. 24, 1891, in the U.S. District Court.

R. M. HOPKINS, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

IN ADMIRALTY.

UNITED STATES,

VS.

THE STEAM TUG PILOT, her Tackle, Apparel, Furniture, etc., JOAN OLIVE DUNSMUIR, Claimant.

A decree having heretofore been made and entered herein on the 24th day of November, 1891, by which it was adjudged and decreed that the United States do have and recover of the claimant of the steam tug Pilot, to-wit: of Joan Olive Dunsmuir, on her bond heretofore given by her for the release of said vessel, the sum of six hundred and fortythree dollars (\$643) for violation of section 4370 of the Revised Statutes of the United States, and it being provided in said decree that if the said claimant do not within twenty days from the date thereof pay into this Court the said sum of \$643, with costs of this action, then and in that event judgment should be entered upon said bond against the sureties therein named without further delay; and the claimant herein, the said Joan Olive Dunsmuir, having neglected and failed to pay into this Court the aforesaid sum of \$643, within twenty days from the date of said decree, as in said decree provided, and the said twenty days having long since expired,

Now, on application of P. H. Winston, Esq., United States District Attorney for the District of Washington,

It is ordered, considered, adjudged and decreed that the United States do have and recover of and from Joan Olive Dunsmuir the principal in said bond named and against R. Lea Barnes and Robert Croft, the sureties on said bond of the claimant herein, the sum of six hundred and fortythree dollars (\$643) together with costs of the libelant herein.

And it is further ordered that unless an appeal be taken from this decree within the time limited by law, and prescribed by the rules and practice of this Court, the libelant have execution to enforce satisfaction thereof.

> C. H. HANFORD. District Judge.

Dated, Seattle, Dec. 18, 1891.

And on the back of the foregoing is endorsed the words and figures following:

U. S. DISTRICT COURT FOR DISTRICT OF WASHINGTON, NORTH-ERN DIVISION.

UNITED STATES,

vs.

THE STEAM TUG Her Tackle, etc.

> BURKE, SHEPARD & WOODS, Proctors for Claimant.

Filed this Dec. 18, 1891.

R. M. HOPKINS, Clerk.

PILOT, No. 259. Final Decree.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

UNITED STATES, Libelant,

VS.

THE STEAM TUG PILOT, her tackle, apparel, furniture, etc., Respondent. and JOAN OLIVE DUNSMUIR, Claimant.

Now comes Joan Olive Dunsmuir, the claimant of the steam tug Pilot, by Messrs Burke, Shepard & Woods, her proctors in admiralty, and excepts to the findings of fact heretofore made and filed by the Court in this cause and to the decrees against said Joan Olive Dunsmuir, and the sureties on her bond as follows :

1. She excepts to that part of the second finding of fact commencing at the third line thereof, which states that "the said bark Valley Forge was bound on a voyage from San Francisco, California, to Port Angeles in the State of Washington."

2. She excepts to that part of the third finding of fact commencing at the fourth line thereof, which states, "and the Pilot then towed her across the Strait to Port Angeles, a contract being made at the time with the master of said Valley Forge that she should be towed by the said tug Pilot first to Port Angeles, thence to Departure Bay in British Columbia to there load, and thence again to sea." 3. She excepts to the eighth finding, and to each and every part thereof.

4. She excepts to the decree made and entered by the Court in this cause on the 24th day of November, 1891, by which it was adjudged and decreed that she pay the sum of \$643 within twenty days from the date of said decree, and to each and every part thereof.

5. She excepts to the final decree in this cause made and entered herein on the 18th day of December, 1891, and to each and every part thereof.

> BURKE, SHEPARD & WOODS, Proctors for Claimant.

And on the back of the foregoing is endorsed the words and figures following:

DIST. COURT OF THE U. S., DIST. OF WASH., NORTHERN DIVISION.

UNITED STATES,

vs:

STEAM TUG PILOT, etc.

JOAN OLIVE DUNSMUIR, Claimant. No. 259. Claimant's Exceptions.

BURKE, SHEPARD & WOODS, Proctors for Claimant.

Filed this Dec. 26, 1891.

R. M. HOPKINS, *Clerk*.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

UNITED STATES OF AMERICA, Libelant. VS. THE STEAM TUG PILOT, Her Steam Boilers, Machinery, Engines, Tackle, Apparel, Furniture, Etc., Respondent, and JOAN OLIVE DUNSMUIR,

Claimant.

Sirs: Please to take notice that the claimant, Joan Olive Dunsmuir, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the decree of the District Court of the United States for the District of Washington, Northern Division, and every part of said decree. entered on the 18th day of December, 1891, and prays that the records and proceedings herein may be returned to said Circuit Court of Appeals and that said decree may be reversed, or such other decree may be made as to said Circuit Court of Appeals Yours, etc., shall seem just.

> BURKE, SHEPARD & WOODS, Proctors for Claimant.

To Patrick Henry Winston, Esq., United States District Attorney, and to R. M. Hopkins, Esq., Clerk of the District Court.

Notice of Appeal.

And on the back of the foregoing is endorsed the words and figures following:

UNITED STATES DISTRICT COURT FOR DISTRICT OF WASH-INGTON, MORTHERN DIVISION.

UNITED STATES OF AMERICA, *Libelant*, vs. THE STEAM TUG PILOT, etc., *Respondent*. JOAN OLIVE DUNSMUIR, *Claimant*. No. 259. Notice of Appeal.

BURKE, SHEPARD & WOODS, Proctors for Claimant.

Filed this Dec, 26, 1891.

R. M. HOPKINS, *Clerk.*

Service of within paper on the undersigned this 26th day of December, 1891, is hereby admitted.

> P. C. SULLIVAN, Assistant U. S. District Attorney.

IN THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

UNITED STATES OF AMERICA, *Libelant*, vs. STEAM TUG PILOT, her engines, boilers, tackle, furniture, etc., *Respondent*. JOAN OLIVE DUNSMUIR, *Claimant*.

1. The Court below, the District Court of the United States for the District of Washington erred in finding as a fact "that on May 3, 1891, the said bark Valley Forge was bound on a voyage from San Francisco, California, to Port Angeles, in the State of Washington, and upon such voyage entered said Strait of Juan de Fuca without assistance and was beating against the head wind toward her port and destination."

2. The said Court erred in finding as a fact "that the said tug Pilot * * * then towed her (the bark Valley Forge) across the Strait to Port Angeles, a contract being made at the time with the master of said Valley Forge that she should be towed by said tug Pilot first to Port Angeles, thence to Departure Bay in British Columbia, and to there load and thence again to sea."

3. The said Court erred in finding as a fact "that the said tug Pilot by reason of towing the said bark Valley Forge as aforesaid became liable to the penalty of \$643."

.

4. The said Court erred in entering the decree of November 24, 1891, "that the United States do have and

Assignment of Error.

recover of and from said claimant Joan Olive Dunsmuir on said bond the sum of \$643., with costs of libelant.

5. The said Court erred in entering the decree of December 18, 1891, "that the United States do have and recover of and from Joan Olive Dunsmuir the principal in said bond named, and R. Lea Barnes and Robert Croft, the sureties on said bond of the claimant herein, the sum of \$643, together with costs of the libelant herein."

6. The said Court erred in not dismissing the libel herein.

BURKE, SHEPARD & WOODS, Proctors for Appellant.

And on the back of the foregoing is endorsed the words and figures following:

IN CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

UNITED STATES OF AMERICA, Libelant,

vs.

STEAM TUG PILOT, etc., Respondent, JOAN OLIVE DUNSMUIR, Claimant. No. 259. Assignment of Error.

BURKE, SHEPARD & WOODS, Proctors for Claimant.

Service of the within paper on the undersigned, this 31st day of Dec., 1891, is hereby admitted.

P. C. SULLIVAN, Asst. U. S. District Attorney.

Filed this Dec. 31, 1891.

R. M. HOPKINS, *Clerk.*

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

UNITED STATES OF AMERICA, *Libelant*, vs. STEAM TUG PILOT, Her Steam Engines, Boilers, Machinery, Tackle, Apparel, Furniture, etc., *Respondent*, And JOAN OLIVE DUNSMUIR, *Claimant*.

Know all men by these presents, that we, Joan Olive Dunsmuir, as principal, and J. W. George and Robert Croft, of Seattle, in the County of King and State of Washington, as sureties are held and firmly bound unto the United States of America in the sum of fifteen hundred dollars (\$1,500), lawful money of the United States for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 28th day of December, A. D. 1891.

Whereas Joan Olive Dunsmuir, claimant, has lately appealed to the Circuit Court of Appeals for the Ninth Circuit from the decree of the Hon., the Judge of the District Court of the United States, in and for the District of Washington, made and pronounced in a certain action to recover a fine or penalty for the alleged violation of a certain statute of the United States, to-wit: section 4370 of the Revised Statutes of the United States, said action being lately pending between said libelant and said claimant;

Now, if said appellant shall well and truly abide by and fulfill and perform the judgment and decree of said Circuit Court of Appeals in the premises, and shall pay and satisfy said decree and such costs and charges as shall be ordered and adjudged to be paid on her part, then this obligation shall be void, otherwise to be and remain in full force and virtue.

JOAN OLIVE DUNSMUIR. By BURKE, SHEPARD & WOODS,

Her Attorneys. J. W. GEORGE, ROBT. CROFT.

[SEAL] [SEAL]

Sealed and delivered in presence of

ANDREW WOODS, F. S. GRIFFITH.

Taken and subscribed before me this 28th of December, A. D. 1891.

F. S. GRIFFITH,

Notary Public in and for the State of Washington, residence, Seattle.

[SEAL]

DISTRICT OF WASHINGTON, COUNTY OF KING.

J. W. George and Robt. Croft, of Seattle, in the County of King and State of Washington, sureties named in the foregoing bond, being each severally sworn, each for himself deposes and says: That he is a resident of and freeholder in the District of Washington, and is worth the sum of fifteen hundred dollars (\$1,500) over and above all liabilities and property exempt from execution.

[SEAL] J. W. GEORGE. ROBT. CROFT.

Subscribed and sworn to before me this 28th day of December, 1891.

F. S. GRIFFITH, Notary Public in and for the State of Washington, residence, Seattle.

And on the back of the foregoing is endorsed the words and figures following:

The within bond is hereby approved both as to form and the sufficiency of the sureties.

Seattle, Washington, December 31, 1891.

C. H. HANFORD, Judge of the United States District Court for the District of Washington.

Examination and justification of sureties herein is hereby waived and the within bond is accepted as sufficient both as to form and sufficiency of sureties.

Seattle, Washington, December 31, 1891.

P. H. WINSTON, U. S. District Attorney. By P. C. SULLIVAN,

Assistant U.S. District Attorney.

71

DISTRICT COURT OF THE UNITED STATES, DISTRICT OF WASH-INGTON, NORTHERN DIVISION.

THE UNITED STATES OF AMERICA, vs. THE STEAM TUG PILOT, Her Steam

Engines, Etc., and JOAN OLIVE DUNSMUIR, No. 259. Bond on Appeal.

Claimant.

BURKE, SHEPARD & WOODS, Proctors for Claimant.

Service of the within paper on the undersigned; the 31st day of Dec., 1891, is hereby admitted.

P. C. SULLIVAN, Assistant U. S. District Attorney.

Filed this Dec. 31, 1891.

R. M. HOPKINS, Clerk.

CITATION.

The United States of America to Patrick Henry Winston, Esq., U. S. District Attorney: Greeting:

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals for the Ninth Circuit, to be held at San Francisco on January 29, 1892, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Washington, Northern Division, wherein the steam tug Pilot and Joan Olive Dunsmuir, owner of said steam tug Pilot, are appellants, and the United States is appellee, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand at Seattle, in the District of Washington, this 31st day of December, in the year of our Lord one thousand eight hundred and ninety-one.

> C. H. HANFORD, Judge of the United States District Court for the District of Washington.

And on the back of the foregoing is endorsed the words and figures following:

DISTRICT COURT OF THE UNITED STATES, DISTICT OF WASH-INGTON, NORTHERN DIVISION.

UNITED STATES OF AMERICA,

vs.

No. 259. Citation.

STEAM TUG PILOT and JOAN OLIVE DUNSMUIR.

> BURKE, SHEPARD & WOOD, Proctors for Claimant.

Service of within paper on the undersigned, this 31st day of December, 1891, is hereby admitted.

> P. C. SULLIVAN, Assistant U. S. District Attorney.

Filed this Dec. 31, 1891.

¥

R. M. HOPKINS, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

UNITED STATES OF AMERICA, DISTRICT OF WASHINGTON, Ss.

I, R. M. Hopkins, Clerk of the United States District Court, District of Washington, do hereby certify that the foregoing, numbering from pages 2 to 73, inclusive, is a true and perfect copy of the record of the above entitled District Court in the case of

THE UNITED STATES OF AMERICA,)	
Libelant,		
VS.		
STEAM TUG PILOT, Her Steamers,		
Engines, Boilers, Machinery,	No. 259.	Admiralty.
Tackle, Apparel, Furniture, Etc.,		
Respondent		
And JOAN OLIVE DUNSMUIR,		
Claimant.		

On appeal from the said above entitled District Court, to the United States Circuit Court of Appeals for the Ninth Circuit.

> In witness whereof I have hereunto set my hand and the seal of said District Court this 12th day of January, 1892.

> > Clerk.

INDEX.

	Ρ.	AGE	5.
Answer,—Amended	9	to	12
Assignment of Error6	6	to	67
Bond on Appeal6	8	to	71
Claimant's Plea	7	to	8
Citation7	1	to	73
Clerk's Certificate			74
Decree,—Interlocutory5	8	to	59
Decree,—Final6	0	to	61
Exceptions,—Claimant's6	2	to	63
Findings of Fact5	5	to	58
Libel of Information	2	to	4
Monition and Marshal's Return	5	to	7
Notice of Appeal6	4	to	65
Opinion5	3	to	55
Testimony1	3	to	52

•

•

.